result is accidental, it has been caused by accidental *means*. *Continental Casualty Co. v. Bruden*, 178 Ark. 683, 11 S.W. (2d) 493 (1928); *Tate v. Benefit Assn. of Ry. Employees*, 186 Minn. 538, 243 N.W. 694 (1932), 17 Minn. L.Rev. 216 (1933); *Lower v. Metropolitan Life Ins. Co.*, 111 N.J.L. 426, 168 Atl. 592 (1933).

If there is a natural and reasonable difference of import between the two terms, "accidental death" and "accidental means," that difference will be given effect. *Imperial Fire Ins. Co. v. Coos County*, 151 U.S. 452, 14 Sup. Ct. 379, 38 L. Ed. 231 (1894); *Hawkeye Comm. Men's Assn. v. Christy*, 294 Fed. 208 (C.C.A. 8th 1923). To the layman the words "external, violent and accidental means" would seem to suggest that the means be accidental as well as the result, and thus would support the view of the majority in the present case. See Cooper, Accidental Means Insurance, 25 Ill. L. Rev. 673 (1931). Mr. Justice Cardozo in urging the opposite interpretation bases his argument on the layman's conception of an accident, rather than the layman's conception of the wording of the policy after careful perusal; and many of the cases he relies upon can be distinguished on the exact wording of the policies involved. In some cases the policy includes sunstroke as a bodily injury and seems to leave open the question of accidental means; but it may be inferred that the policy does include death by sunstroke since it is difficult to conceive of sunstroke being brought on by other than intended means. *Higgins v. Midland Casualty Co.*, 281 Ill. 431, 118 N.E. 11 (1917); *Eslev v. Fidelity & Casualty Co.*, 187 Ind. 447, 120 N.E. 42 (1918), *Gallagher v. Fidelity & Casualty Co.*, 221 N.Y. 664, 117 N.E. 1067 (1914); *Continental Casualty Co. v. Clark*, 70 Okla. 187, 173 Pac. 453 (1918); *Bryant v. Continental Casualty Co.*, 107 Tex. 582, 182 S.W. 673 (1916). It also might be said that the express mention of sunstroke would lead a man to believe the policy did cover that cause of death, and, in case of ambiguity, it should be construed in favor of the insured. *Harris v. Am. Casualty Co.*, 83 N.J.L. 641, 85 Atl. 194 (1912); *Weiss v. Union Indemnity Co.*, 107 N.J.L. 348, 153 Atl. 508 (1931). In other cases, express provisions provide for liability if death is caused by sunstroke. *Pack v. Prudential Casualty Co.*, 140 Ky. 47, 185 S.W. 496 (1916); *Mather v. London Guarantee & Accident Co.*, 125 Minn. 186, 145 N.W. 963 (1914).

While sunstroke technically is and has been treated in some cases as a disease, *Dozier v. Fidelity & Casualty Co.*, 46 Fed. 446 (C.C.Mo. 1891); *Sinclair v. Assurance Co.*, 2 El. & El. 478, 7 Jurist (N.S.) 367 (1861), almost all of the later cases regard it as an accident. See *Lower v. Metropolitan Life Ins. Co.*, 111 N.J.L. 426, 168 Atl. 592 (1933). The clause in one of the policies excluding the insurer from liability if death should result partially from a disease seems of no importance whether sunstroke is treated as a disease or as an accidental injury, since diseases attributable solely to an external force and not existing in the insured at the time of the accident are not regarded as causes of the death, but as effects of the accident. The disease is considered only a link in the chain of causation and the accident is looked upon as the actual cause of the death. *Western Comm. Trav. Assn. v. Smith*, 85 Fed. 401 (C.C.A. 8th 1898); *Aetna Life Ins. Co. v. Allen*, 32 F. (2d) 490 (C.C.A. 1st 1929); *Paist v. Aetna Life Ins. Co.*, 54 F. (2d) 393 (D.C.Pa. 1931).

RICHARD LINDLAND

Mortgages—Claim of Junior Mortgagee to Prior Lien for Payment of Taxes on Premises—[New York].—In an action for the foreclosure of a prior mortgage, junior mortgagees interposed a defense and counterclaim for taxes and water rents which they had paid, claiming equitable subrogation to the rights and remedies of the taxing body,

and seeking a prior lien on the proceeds of the foreclosure sale. *Held*, the defense and counterclaim is insufficient in law. *Laventall v. Pomerantz*, 263 N.Y. 110, 188 N.E. 271 (1933).

Although a mortgagee is generally allowed reimbursement when he has paid taxes upon which the mortgagor was in default, 84 A.L.R. 1366; 3 Cooley, Taxation (4th ed. 1924), § 1263, there is a division of authority as to whether a prior lien should be allowed for the amount paid. See 61 A.L.R. 601; 84 A.L.R. 1393. In some jurisdictions the taxpayer will be given a lien only equal in rank to that of his incumbrance. *Allison v. Corson*, 83 Fed. 752 (C.C.S.D. 1897); *Sperry v. Butler*, 75 Conn. 369, 53 Atl. 899 (1903); *Pearmain v. Mass. Hospital Life Ins. Co.*, 206 Mass. 377, 92 N.E. 497 (1910); *Chrisman v. Hough*, 146 Mo. 102, 47 S.W. 941 (1898); *Lawyers' Title and Guaranty Co. v. Claren*, 237 App. Div. 188, 260 N.Y.S. 847 (1932); see 46 Harv. L. Rev. 1036 (1933). Other jurisdictions recognize the right of the taxpayer to be equitably subrogated to the lien of the taxing power for the amount paid, thus allowing a lien paramount to all senior incumbrances. *Ringo v. Woodruff*, 43 Ark. 469, 498 (1884); *Atchison Savings Bank v. Wyman*, 65 Kan. 314, 69 Pac. 326 (1902); *Fifth Ward Bldg. Assn. v. Dine's Trustee*, 60 S.W. 9 (Ky. 1900); *Noeker v. Howry*, 119 Mich. 626, 78 N.W. 669 (1899); *Norton v. Metropolitan Life Ins. Co.*, 74 Minn. 484, 77 N.W. 298, 539 (1898); *Fiacre v. Chapman*, 32 N.J.Eq. 463 (1880); *Fischer v. Woodruff*, 25 Wash. 67, 64 Pac. 923 (1901).

Against the right of the taxpayer to be equitably subrogated to the lien of the taxing power, it has been argued that to allow subrogation would necessarily require granting the taxing body's privileges as to methods of collection. *Sperry v. Butler*, 75 Conn. 369, 53 Atl. 899 (1903). It would seem entirely possible, however, to allow subrogation to a lien without also granting the privilege as to collection.

It is also urged that where the duty to pay taxes is upon the mortgagor, the junior incumbrancer cannot be subrogated to the rights of the taxing power so as to give him priority over the senior mortgagee, because subrogation cannot be invoked against a third person who was not liable for the indebtedness discharged. *Lawyers' Title and Guaranty Co. v. Claren*, 237 App. Div. 188, 260 N.Y.S. 847 (1932). But the claim of the taxpayer is for subrogation to a lien, not to a right *in personam* against the prior incumbrancer. See 46 Harv. L. Rev. 1036 (1933).

The strongest argument against subrogation seems to be that since the right to foreclose on default in the payment of taxes is usually reserved in the mortgage, the junior mortgagee's payment of taxes has deprived the senior mortgagee of his right to foreclose, and should not in addition give the taxpayer a lien prior to the senior mortgage. This argument is relied upon in the principal case and in *Pearmain v. Mass. Hospital Life Ins. Co.*, 206 Mass. 377, 92 N.E. 497 (1910). Although there is little authority, it seems doubtful whether the payment of taxes by the second mortgagee would prevent foreclosure. See 2 Jones, Mortgages (7th ed. 1915), § 1175a. And it may be suggested that ordinarily a mortgagee would prefer the cessation of tax penalties and the removal of the possibility of legal proceedings by the taxing power to the opportunity to foreclose. *Noeker v. Howry*, 119 Mich. 626, 78 N.W. 669 (1899); *Fiacre v. Chapman*, 32 N.J.Eq. 463 (1880).

Where the doctrine of subrogation to the paramount lien is applied, it is done so only if it is warranted by the circumstances of the particular case. Thus where the junior mortgagee who paid the taxes was in possession of the property and collected rents in excess of the taxes paid, he was refused subrogation to the lien of the taxing body.

Flower v. Bricker, 178 Ark. 764, 12 S.W. (2d) 394 (1929). And where the prior mortgagee was assured by the junior mortgagee that taxes had been paid, and that no prior lien was in existence, the latter was estopped to assert a prior lien for the taxes he had paid. *Warranty Bldg. & Loan Assn. v. Cimirro Construction Co.*, 111 N.J.Eq. 8, 160 Atl. 847 (1932), affd. 113 N.J.Eq. 31, 166 Atl. 198 (1933). In a few jurisdictions, the problem has been recognized by the legislature and the taxpaying junior incumbrancer given a prior lien by statute. Ky. Stat. (1930), § 4032; La. Civ. Code (1932), Art. 2161; see *Timken v. Wisner Estates*, 153 La. 262, 95 So. 711 (1923).

MISHA RUBIN

Partnership—Individual Liability of Beneficiaries of Business Trust—[New York]. —Defendants formed a syndicate agreement to deal in bank stock with sole control vested in named managers. The agreement restricted the liability of a participant to the amount contributed. Plaintiff who knew of the agreement brought this action to recover the balance due on a promissory note or the same balance due for money lent. The courts below held the agreement created a trust and that the managers would be solely liable. *Held*, judgment below reversed. The subscribers are liable as partners, and the plaintiff is bound by the agreement to restrict liability. *Brown v. Bedell*, 263 N.Y. 177, 188 N.E. 641 (1934).

The business trust has been used as a device to escape partnership liability and to secure corporate advantages where there is an inability to incorporate or a desire to avoid corporate burdens. See *Weber Co. v. Alter*, 120 Kan. 557, 245 Pac. 143, 46 A.L.R. 158 (1926); Bonbright and Means, The Holding Company (1932), 81, 120, 207–208, 218; Warren, Corporate Advantages without Incorporation (1929), 398; Powell, The Passing of the Corporation in Business, 2 Minn. L. Rev. 401 (1918); Massachusetts Trusts, 37 Yale L. Jour. 1103 (1928). The investors, while contributing capital for the purpose of profit making, seek to be protected from personal liability on the theory that as cestuis they are not answerable for the debts of the trust. *Dantzler v. McInnis*, 151 Ala. 293, 44 So. 193 (1907); *Goldwater v. Altman*, 210 Cal. 408, 292 Pac. 624 (1930); *Falardeau v. Boston Art Assn.*, 182 Mass. 405, 65 N.E. 797 (1903); see 19 Cal. L. Rev. 42 (1930). Some jurisdictions have permitted such insulation from liability where the investors have retained little or no control over the trustees. *Dana v. Treasurer & Receiver General*, 227 Mass. 562, 116 N.E. 947 (1917); *Greco v. Hubbard*, 252 Mass. 37, 147 N.E. 272 (1925). Investors retaining no control, without the protection of the trust, are like dormant partners, who in order to escape partnership liability would probably have to comply with the limited partnership statutes. But see *Giles v. Vette*, 263 U.S. 553, 44 Sup. Ct. 157, 68 L. Ed. 441 (1924); Crane, Are Limited Partnerships Necessary?, 17 Minn. L. Rev. 351 (1933). Even the protection of the trust has been insufficient in some jurisdictions to prevent liability to the investors because the legislature by authorizing certain business devices for limiting liability has been said to have negatived the use of others. *Reilly v. Clyne*, 27 Ariz. 432, 234 Pac. 35 (1925); *Willey v. Hoggson Corp.*, 90 Fla. 343, 353, 106 So. 408 (1925); *McClaren v. Dawes Elec. Sign & Mfg. Co.*, 86 Ind. App. 196, 156 N.E. 584 (1927); *Weber Engine Co. v. Barley*, 123 Kan. 665, 266 Pac. 803 (1927); *Thompson v. Schmitt*, 115 Tex. 53, 274 S.W. 554 (1925); *State v. Paine*, 137 Wash. 566, 243 Pac. 2 (1926); see Magruder, The Position of Shareholders in Business Trusts, 23 Col. L. Rev. 423 (1923); Brown, Contractual Limitation